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09/661,171	09/13/2000	Christopher D. Barr	66688	7502

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/17/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/661,171

Applicant(s)

BARR ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The amendment filed September 30, 2002 has been entered. According claims 1-18 have been cancelled and claims 19-30 have been added.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 19-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "high speed commercial filling operation" in claim 19 is a relative term which renders the claim indefinite. The term "high speed" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For examination purposes, an automated operation wherein fastening the top and bottom are glued will be considered "high speed ", as opposed to a manual operation wherein fastening the top and bottom of the containers is accomplished by folding/tucking flaps.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Ringler (US 2874524), Williamson (US 3073501), Brizzi et al. (US 5277304), Munson (US 422032), Bonville (US 2396150), Frost (US 5181649), and Taylor (US 2011383).

6. Regarding claims 19-22, Latif teaches a method of forming and filling an open-ended partially pre-glued and partially assembled carton (i.e. in a first phase, Column 4, line 43 to Column 5, line 2) on a machine (Column 5, lines 35-36) where the top side flaps (A1 and A2 in Figures) are folded, the top and top front are folded (B2 and B1 in Figures) to close the top and leaving the bottom open (Column 5, lines 3-20, Figure 2b), providing a plurality of wrapped elongated products and inserting the wrapped elongated products (i.e. a plurality of cigarette *packs* stacked front to back from the bottom to the top of the pack) in through the bottom by applying force (Column 5, lines 23-28), folding the bottom flaps (C1 and C2), folding the bottom front/back inward (B4/B3 can alternatively be front/back in Column 6, lines 10-22) and fastening with glue (Column 5, 28-32), as recited in claim 19. Once assembled the top pivots around a score line 12 (see Figures, (Column 6, lines 23-39), and thus Latif teaches a line of weakness as recited in claim 21. Although Latif teaches the carton is designed for either manual assembly or automatic assembly Latif is silent in teaching *simultaneously* inserting a plurality of wrapped products with a *mandrel* such that the products end seal is readily accessible from the top of the carton as recited in claim 19. Latif is silent in

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teaching a top front that is attached to the *front* panel as recited in claim 19, by a releasable attachment as recited in claim 20. Latif is also silent in teaching the elongated wrapped products are on a wrapped tray that has a notch and a line of weakness and the wrapper seal is readily accessible when the carton is opened as recited in claim 19. Latif is also silent in teaching food products and a curved recess in the upper edge of the wall to facilitate handling as recited in claim 19 formed by die cutting the wall as recited in claim 22.

7. With respect to automatic assembly using a mandrel, Latif teaching forming and filling by a machine, and Ringler is relied on as evidence of the conventionality of filling a cigarette container using automated assembly and *simultaneously* inserting the cigarettes using a mandrel (Column 3, line 70 to Column 4, line 29). Therefore, it would have been obvious to use a mandrel in the method of Latif since one would have been substituting one method of filling the bottom of a container with cigarettes for another.

8. With respect to having a top front flap glued to the front panel, Williamson, like Latif, teaches a container with a reclosable flip top that is initially sealed with glue and then unsealed to use for dispensing. Williamson is relied on as evidence of the conventionality of having a top front flap glued, which comprises a releasable attachment as recited in claim 20, to the front panel for a container with a reclosable flip top (In Figures 4 and 2 see glue spots 41 and 42). Therefore, it would have been obvious to provide a top front flap glued to the front since one would have been substituting one top design for another for the same purpose: providing a top that is sealed after packaging and is unsealed to provide a reclosable flip top.

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9. With respect to having the seam readily available when the container is opened, Latif teaches stacking the packs front to back from the bottom of the carton to the top. Brizzi et al. are relied on as evidence of the conventionality of cartons holding packs of cigarettes wherein the packs are positioned front to back, but wherein the seam of each pack is readily accessible (Abstract, Figures 1 and 2). Therefore, it would have been obvious to have the seal available when the container is opened since it was known to position multiple cigarette packs in a reclosable flip top carton in this manner and one would have been substituting one method of loading packs of cigarettes into a carton for another.

10. With respect to the recited tray structure, Munson is relied on as evidence of the conventionality of wrapped cigarette packs comprising product comprising a tray and an overwrap (a tubular cover) wherein the tray has slot with a V-shaped notch on each sidewall extending a substantial portion (i.e. the entire portion) of the sidewall and corresponding to a line of weakness on the bottom wall such that the tray and overwrap are used in concert to dispense the cigarettes (Figures 1-4, Page 1, lines 8-80). Therefore, it would have been obvious to modify Latif and include a tray in each cigarette pack in the container since this one would assist in dispensing cigarettes from each pack and one would have been substituting one cigarette pack design for another.

11. With respect to a food product, Bonville is relied on as evidence of the conventionality of using cigarettes packs to package either cigarettes or food products (Column 1, lines 1-10). Frost is relied on as evidence of the conventionality of a packaging food products in an wrapped elongated tray, wherein cuts formed in two

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sidewalls is provided to facilitate folding of the tray for dispensing of the products so the consumer does not have to touch the food during consumption (Column 4, lines 13-21, Column 4, lines 31-47, Column 6, lines 28-36, Figures 2,3,9-12). Therefore, it would have been obvious to include food products in the carton of Latif since one would have been substituting one conventional packaged good in a wrapped elongated tray for another.

12. With respect to having a curved recess in a wall of the tray, Taylor is relied on as evidence of the conventionality of providing a curved recess on a wall of an elongated food tray to provide curved finger support cut out, or die cut as recited in claim 22, and prevent the consumer from touch the food (item 21 of Figure 1, Page 1, lines 23-36). Therefore it would have been obvious to further modify the elongated wrapped products to include a tray with a curved recess on a wall formed by a die cut because it provides finger support and prevents a consumer from contacting the contents of the tray.

13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Ringler (US 2874524), Williamson (US 3073501), Brizzi et al. (US 5277304), Munson (US 422032), Bonville (US 2396150), Frost (US 5181649), and Taylor (US 2011383), as applied to claims 19 -22 above, further in view Sellman (US 1080933).

14. Regarding claim 23, Latif is silent in a notch extending between $\frac{1}{4}$ and $\frac{3}{4}$ down a side wall from the top edge of the tray. However, it was well known to provide v-shaped notches of various lengths for trays to provide the same function. Sellman teaches V-

shaped notches about $1/3$ of the wall (i.e. between $1/4$ to $3/4$) will provide the same function as the notches discussed in paragraphs 10 and 11 above. Therefore, once it was known to use V-shaped notch that was the entire distance and between $1/4$ and $3/4$ the distance, to select any other possible distance from the top of the edge would have been an obvious matter of choice design choice since these locations perform the same intended function and one would have been substituting one V-shape design for another for the same purpose.

15. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Ringler (US 2874524), Williamson (US 3073501), Brizzi et al. (US 5277304), Munson (US 422032), Bonville (US 2396150), Frost (US 5181649), and Taylor (US 2011383), further in view Sellman (US 1080933), as applied to claims 23 above, further in view Pierce Jr. (US3400877).

16. Latif is silent in teaching the tray is formed by locking the corners together without requiring adhesive or manual assembly. Pierce is relied on as evidence of the conventionality of automatically assembling trays by locking corners without the use of glue (Column 1, line 10 to column 2, line 23, Figures 1-8). Thus, once it was known to make a tray using any conventional method of forming a tray, such as a glueless automated method, would have been an obvious matter choice.

17. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Ringler (US 2874524), Williamson (US 3073501),

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Brizzi et al. (US 5277304), Munson (US 422032), Bonville (US 2396150), Frost (US 5181649), Taylor (US 2011383), and Sellman (US 1080933), further in view Pierce Jr. (US3400877), as applied to claim 24 above, further in view of Kingham et al. (US 4721622).

18. Regarding claims 25 and 26, Latif is silent in teaching the wrapped elongated food product comprises a cream cheese component disposed within a baked bread product. Kingham et al. is relied on as evidence of packaging a cream cheese component disposed within a baked bread product within a sealed wrapper and further packaged within an outer carton (Column 7, line 44 to Column 8, line 8, Example 1). Therefore it would have been obvious to include a cream cheese component disposed within a baked bread product since one would have been substituting one wrapped elongated food product for another packaged within an outer carton.

19. Claims 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Ringler (US 2874524), Williamson (US 3073501), Brizzi et al. (US 5277304), Munson (US 422032), Bonville (US 2396150), Frost (US 5181649), Taylor (US 2011383), Sellman (US 1080933), Pierce Jr. (US3400877), and Kingham et al. (US 4721622) as applied to claims 25 and 26 above, further in view of Phillips Jr. (US 4738359)

20. Latif teaches any number of wrapped elongated products packaged in the carton. Kingham et al. teach wrapped elongated food product should be sized to fit into a person's hand (Column lines 5-30). Although Latif is silent in teaching any particular

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tray size, as recited in claim 27, any particular thickness as recited in claims 28 and 29, or a particular carton size recited in claim 30, the particular wrapped elongated product (e.g. cigarette pack) taught by Latif has a notoriously well known dimension.

21. Philips is relied on as evidence of the conventional cigarette pack, carton, and paperboard dimensions. Philips teaches it is well known in the art that cigarette packs are 70-100 mm long (i.e. 2.76 in to 3.9 in) and standard cartons are 266-286 mm wide, 70-100 mm high and 40-50 mm deep, comprising 2 rows of 5 packs. Based on these carton dimensions and pack arrangement, it is apparent that the conventional pack width and depth is about 53.2-57.2 mm (2.1-2.25 in) and 20-25 mm (0.8-1.0 in), respectively. Phillips also teaches it is conventional to use paperboard with a thickness of 0.25-0.30 mm (0.01 to 0.012 inches) (Column 4, lines 13-44).

22. Therefore, it would have been obvious to include a tray size that has a length of 3.5-5.5 in, a width of 1-3 in and a depth of tray of 0.5-1.5 in as recited in claim 27, since Latif is configured for a conventional wrapped elongated products and these are conventional dimensions for a wrapped elongated product pack. Furthermore, to select any size that can be held in one's hand would have been obvious since Kingham et al. teach wrapped elongated food products should be sized to fit into a person's hand. To select any particular carton dimension, as recited in claim 30, would have been an obvious result effective variable of the number of wrapped products packaged in the carton, since Latif teaches any number can be inserted and the general dimensions of each pack is known. It would have been further obvious to select a paperboard thickness of 0.01-0.025 in for a thickness for both the carton and tray as recited in claim

28 since 0.010 to 0.012 in paperboard was a conventional carton material thickness. To select any thickness higher than 0.012 in would have been an obvious result effective variable of the weight of each product as well as the number of trays per carton since 0.012 in is sufficient for cartons holding 10 cigarette packs which would weigh significantly less than 10 cheese filled bakery products that fit in one's hand.

Response to Arguments

23. Applicant's arguments with respect to the new claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Soper (US 411398) teaches an alternative method to notches for providing a dispensing tray.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761
January 9, 2003


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